



FISCAL MEMORANDUM

SB 1674 - HB 1671

January 19, 2022

SUMMARY OF BILL AS AMENDED (011568): Changes eligibility criteria to receive an Education Savings Account (ESA) to include students that are zoned to attend or attend a school in the Achievement School District (ASD) or zoned to attend a local education agency (LEA), that during a three-year period preceding September 1, 2025, or thereafter, failed to offer 180 days of in-person learning.

FISCAL IMPACT OF BILL AS AMENDED:

NOT SIGNIFICANT

Assumptions for the bill as amended:

- The proposed ESA student eligibility criteria changes will apply to: students that are zoned to attend or attend a school that is in the ASD, or students that attend a school that failed to offer 180 days of in-person instruction in response to the COVID-19 pandemic beginning September 1, 2022 and through subsequent years.
- Tennessee Code Annotated § 49-6-2602(3)(C) currently defines ESA student eligibility to include students zoned to attend a school that is in the ASD on May 24, 2019. The new eligibility criteria removes the date requirement and will apply to students that are zoned to attend or attend a school that is currently in the ASD.
- In the 2018-2019 school year there were 30 schools in the ASD. In the current 2021-2022 school year there are 26 schools in the ASD and four of those schools will be returning to Shelby County Schools at the end of the school year.
- Schools in the ASD during the 2018-2019 school year and schools currently in the ASD are located in either Davidson or Shelby Counties. Therefore, the expanded ESA student eligibility criteria currently only applies to schools located in Davidson and Shelby counties that are also in the ASD.
- It is unknown which schools may be in the ASD in future years and whether an increase or decrease in the number of students eligible to receive an ESA may occur.
- Tennessee Code Annotated § 49-6-3004 requires 180 days of classroom instruction for public schools. However, schools may accumulate up to 13 instructional days (through excess instructional time) that may be applied toward meeting instructional time requirements; or, schools may request a waiver from the Commissioner of DOE if the 180 days of classroom instruction is not met.

- It is expected that all public schools will be able to meet the 180 days of classroom instruction beginning in the 2022-23 school year and subsequent years. Therefore, the eligibility criteria related to instructional days will not apply to any schools.
- Public Chapter 506 of the 111th General Assembly was signed into law May 24, 2019, and created the ESA Pilot Program.
- On February 6, 2020, Metro Nashville and Shelby County sued the State, contending that Tennessee's ESA Pilot Program violated sections of the Tennessee Constitution.
- On May 4, 2020, the Chancery Court of Davidson County ruled that the Program violated the Home Rule provision of the state constitution and entered an order preventing the State from advancing the ESA program.
- The Department of Education (DOE) is currently prevented from taking any further action on completed or pending ESA applications while the court order remains in effect.
- According to the DOE website, DOE is seeking reversal of the court's order and hopes to succeed on appeal to allow the Program to start enrollment this school year.
- Public Chapter 506 of the 111th General Assembly establishes annual enrollment limits for participation in the Tennessee ESA Pilot Program. Based on the number of eligible students and the participation rate, it is assumed that the yearly cap will be reached every year under current law (see the table below).

School Year	Enrollment Limit	Projected Participants*
2022-23	7,500	7,500
2023-24	10,000	10,000
2024-25	12,500	12,500
2025-26	15,000	15,000

*After the 2025-26 school year, the projected number of participants will be 15,000 each year.

- Under current law, the number of eligible students is expected to exceed enrollment limits. Changing the eligibility requirements as outlined in the will not affect the total number of participants in the Tennessee ESA Pilot Program.
- Tennessee Code Annotated § 49-6-2604 establishes that if, in the application period for a school year, the number of program applications received by DOE exceeds the maximum number of students that may participate in the program for that school year, then DOE shall select students for participation in the program through an enrollment lottery process.
- In the event that the court order is reversed, DOE would be required under current law to implement the ESA Pilot Program.
- Any impact on DOE or LEAs resulting from additional ESA eligibility criteria will be not significant.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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